

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADVOCATES FOR ARTS-BASED EDUCATION
CORPORATION D/B/A LUSHER CHARTER
SCHOOL

Employer

and

Case 15-RC-174745

UNITED TEACHERS OF NEW ORLEANS,
LOCAL 527, LFT, AFT
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we agree with the Regional Director, for the reasons she stated, that the Employer charter school is not exempt as a political subdivision under Sec. 2(2) of the National Labor Relations Act. We find that the Regional Director correctly applied the test in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) ("*Hawkins County*"), in finding that the Employer was not created directly by the state so as to constitute a department or administrative arm of the government nor administered by individuals who are responsible to public officials or the general electorate. We do not, however, rely on the Regional Director's citation to *Chicago Mathematics & Science Academy Charter School*, 359 NLRB 455 (2012), a recess-Board decision. See *NLRB v. Noel Canning*, 1345 S. Ct. 2550 (2014). Instead, we find that the Regional Director's analysis is consistent with *Hyde Leadership Charter School-Brooklyn*, 364 NLRB No. 88 (2016) ("*Hyde Leadership*") and *Pennsylvania Virtual Charter School*, 364 NLRB No. 87 (2016) ("*Pennsylvania Virtual*"). In each of those cases, the Board applied the *Hawkins County* test to a charter school operating pursuant to a state statute, whose creation by individual applicants and governance by its board of trustees exhibit only minor, non-substantive differences from the instant case. In asserting jurisdiction in those cases, the Board rejected arguments similar to those raised by the Employer in this case.

We likewise find no merit in the Employer's argument that the Board should find that the Employer is a joint employer with the Orleans Parish School Board, a public agency, and thus should be exempt from the Board's jurisdiction on that basis. The Employer did not raise this argument to the Regional Director, so the issue is not properly before the Board. See Sec. 102.67(e) of the Board's Rules and Regulations. In any event, the Employer's argument is that because the Orleans Parish School Board controls the salaries, benefits, and seniority of several employees working at the charter school and has ultimate hiring and firing authority, the Employer cannot engage in meaningful bargaining over their terms and conditions of employment. Under *Management Training Corp.*, 317 NLRB 1355, 1358 (1995), however, these circumstances are irrelevant because the Board will assert jurisdiction over any employer,

MARK GASTON PEARCE,

MEMBER

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., February 1, 2017

despite its close ties with an exempt governmental entity, as long as it meets the definition of employment set out in Sec. 2(2) of the Act and the applicable monetary jurisdictional standards. The Employer has not asserted that it does not meet either of these requirements.

Finally, we also find no merit in the Employer's assertion that the Board should, pursuant to Sec. 14(c)(1) of the Act, decline to assert jurisdiction over the charter school, a private, non-profit education corporation, because of its limited impact on interstate commerce, the legislative intent in the state statute to treat charter schools as public schools, and the state's authority to regulate the labor relations of its public employees. The Board has rejected similar arguments in *Pennsylvania Virtual*, supra, slip op. at 9-10, and *Hyde Leadership*, supra, slip op. at 7-8. Further, we disagree with our colleague's view that the Board should decline to exercise jurisdiction over charter schools in New Orleans because the operation of these schools is essentially local in nature, for the reasons the Board discussed in *Pennsylvania Virtual*, slip op. at 9-10.

Acting Chairman Miscimarra, dissenting:

I would grant the Employer's Request for Review and dismiss the petition. The Employer operates a charter school chartered by the Orleans Parish (Louisiana) School Board, a publicly-elected body, pursuant to the Louisiana Charter School Demonstration Programs Law. For purposes of this case, I do not address my colleagues' finding that the Employer fails to constitute a "political subdivision" of the State of Louisiana exempt from the Board's jurisdiction pursuant to Section 2(2) under the standard set forth in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) and as discussed in my dissenting opinion in *Hyde Leadership Charter School-Brooklyn*, 364 NLRB No. 88, slip op. at 9-16 (2016) (Acting Chairman Miscimarra, dissenting). Instead, for the reasons fully explained in my dissenting opinions in *Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 11-18 (2016) (Acting Chairman Miscimarra, dissenting), and *Hyde Leadership Charter School-Brooklyn*, supra, slip op. at 14-16, I believe the Board should decline to assert jurisdiction over charter schools generally and in this case. Declining jurisdiction is particularly appropriate in this case, because more than 90 percent of all Orleans Parish public school students currently attend independent public charter schools like the Employer.² In my view, that, along with other factors, underscores that the Orleans Parish charter schools are "essentially local in nature" and "peculiarly related to, and regulated by, local governments." *Pennsylvania Virtual Charter School*, supra, slip op. at 13 (quoting *Hialeah Race Course*, 125 NLRB 388, 391 (1959) and 38 Fed. Reg. 9537, 9537 (1973)).

PHILIP A. MISCIMARRA,

ACTING CHAIRMAN

² See https://en.wikipedia.org/wiki/Orleans_Parish_School_Board (last visited 12/14/16).